

UNITED STATES DISTRICT COURT

For

WESTERN DISTRICT OF TEXAS

Petition for Warrant or Summons for Offender Under Supervision

Name of Offender: Aaron Keith Avery Case Number: SA19CR0832
Name of Sentencing Judicial Officer: Honorable Nelva Gonzales Ramos, United States District Judge
Date of Original Sentence: June 27, 2019
Original Offense: **Count 1:** Transportation of an Undocumented Alien, in violation of 8 U.S.C. §§ 1324(a)(1)(A)(ii), 1324(a)(1)(A)(v)(II), and 1324(a)(1)(B)(ii); **Count 2:** Transportation of an Undocumented Alien, in violation of 8 U.S.C. §§ 1324(a)(1)(A)(ii), 1324(a)(1)(A)(v)(II), and 1324(a)(1)(B)(ii)
Original Sentence: A total of Eight (8) months imprisonment on both **Count 1** and **Count 2**, the term to be served concurrently; followed by Three (3) years supervised release on **Count 1** and **Count 2**, the terms to be served concurrently.
Type of Supervision: Supervised Release Date Supervision Commenced: September 5, 2019
Assistant U.S. Attorney: Sarah Wannarka Defense Attorney: Lila Michelle Garza

PREVIOUS COURT ACTION

On November 19, 2019, Transfer of Jurisdiction was filed from the Southern District of Texas, Corpus Christi Division, to the Western District of Texas, San Antonio Division.

On November 19, 2019, a Probation Form 12A- Report on Offender Under Supervision was submitted to the Court due to a positive urine specimen test for marijuana. No adverse action was requested at that time and substance abuse treatment and weekly urinalysis were continued. On November 26, 2019, the Court concurred.

On October 21, 2021, a Probation Form 12A- Report on Offender Under Supervision was submitted to the Court due to a positive urine specimen test for marijuana. No adverse action was requested at that time and random urinalysis testing was increased. On October 27, 2021, the Court concurred.

On March 10, 2022, a Probation Form 12A- Report on Offender Under Supervision was submitted to the Court due to a positive urine specimen test for marijuana. No adverse action was requested at that time, and he was re-referred to substance abuse treatment and testing. On March 14, 2022, the Court concurred.

PETITIONING THE COURT

- ☒ To issue a warrant
☐ To issue a summons

The probation officer believes that the offender has violated the following condition(s) of supervision:

<u>Violation</u>	<u>Nature of Noncompliance</u>
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1. **Mandatory Condition No. 2:** The defendant must not unlawfully possess a controlled substance.
2. **Mandatory Condition No. 3:** The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release on probation or supervised release and at least two periodic drug tests, thereafter, as determined by the court.
3. **Special Condition:** The defendant may not possess any controlled substances without a valid prescription. If you do have a valid prescription, you must follow the instruction on the prescriptions.
4. **Special Condition:** The defendant must submit to substance-abuse testing to determine if you have used a prohibited substance, and you must pay the costs of the testing if financially able. You may not attempt to obstruct or tamper with the testing methods.
5. **Special Condition:** The defendant shall not knowingly purchase, possess, distribute, administer, or otherwise use any psychoactive substances including synthetic marijuana, bath salts, that impair a person's physical or mental functioning, whether or not intended for human consumption, except as with the prior approval of the probation officer.

On September 27, 2019, the offender submitted a urinalysis which tested positive for marijuana. He admitted drug use to the probation officer and signed the Admittal/Denial form.

On October 6, 2021, he submitted a urinalysis which tested positive for marijuana. He admitted drug use to the probation officer and signed the Admittal/ Denial form.

On February 22, 2022, he submitted a urinalysis which tested positive for marijuana. He admitted to smoking a vape containing cannabinoids.

Mr. Avery additionally submitted positive urine specimens for marijuana on the following dates: March 22nd, March 28th, March 29th, April 11th, April 28th, May 13th and May 31, 2022. He denied any drug use or using a vape containing cannabinoids.

The offender failed to submit to random urinalysis testing on the following dates: September 20, 2019, January 29, 2020, February 18, 2020, January 27, 2022, March 21, 2022, May 18, 2022, and June 9, 2022.

U.S. Probation Officer Recommendation:

Mr. Avery is a Criminal History Category of II. He began using illegal substances at the age of fifteen and admits having abused marijuana. On September 14, 2018, he was arrested by United States Border Patrol agents for the instant offense. On September 20, 2018, he was released on a \$25,000 bond with a \$500.00 cash deposit. On November 27, 2018, he tested positive for amphetamine and admitted to the U.S. Pretrial Officer he had taken Tylenol with codeine for his migraine headaches. On January 9, 2019, a Petition for Action on Conditions of Pretrial Release was submitted to the Court alleging the positive urine specimen, which tested positive for methamphetamines. A warrant was issued on January 10, 2019, and Avery was arrested on January 11, 2019.

On September 5, 2019, Mr. Avery commenced his supervised release. He was referred to substance abuse treatment with Treatment Associates. On September 27, 2019, Mr. Avery tested positive for marijuana. He admitted to drug use and signed the Admittal form. The Court was notified, and he was continued in treatment. In February 2020, he completed treatment. On October 6, 2021, he tested positive for marijuana. He admitted to drug use and signed the Admittal form. The Court was notified, and random urinalysis were increased. On February 22, 2022, he tested positive for marijuana. He admitted to smoking a cannabidiol vape. He was referred to Lifetime Recovery for outpatient treatment and testing. Since that time, the following urine specimens have tested positive for cannabinoid: March 22nd, March 28th, and March 29, 2022; April 11th and April 28, 2022; and May 13th and May 31, 2022. He has denied using marijuana or a vape containing cannabinoids. An Interpretation Report was received from the National Laboratory, indicating there was an increase of marijuana/Delta 9 THC use between urine specimens dated March 22, 2022, and March 29, 2022. Mr. Avery denied an increase of use since February 22, 2022.

The offender has been provided the resources to address addictive patterns; however, he continues to use drugs and violate his supervised release. It is respectfully recommended that a warrant be issued for his arrest and a hearing be held to show cause as to why his term of supervision should not be revoked.

☒ The term of supervision should be

☒ revoked. (Maximum penalty: Count 1 and Count 2: 2 years imprisonment; Count 1 and Count 2: 3 years supervised release; less any term of imprisonment at sentencing; and payment of any unsatisfied monetary sanction previously imposed)

☐ extended for __ years, for a total term of __ years.

☐ The conditions of supervision should be modified as follows:

Approved:



Corrina Lopez
Supervising U.S. Probation Officer
Telephone: (210) 472-6590, Ext. 5342

Respectfully submitted,



Cynthia Gonzalez
Senior U.S. Probation Officer
Telephone: (210) 472-6590, Ext. 5379
Date: June 16, 2022

cc: Sarah Wannarka
Assistant U.S. Attorney

Brenda Trejo-Olivarri
Assistant Deputy Chief U.S. Probation Officer

THE COURT ORDERS:

- ☐ No action.
- ☒ The issuance of a warrant.
- ☐ The issuance of a summons.
- ☐ Other _____



Honorable Xavier Rodriguez
U.S. District Judge
June 17, 2022

Date